

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MRS. JUSTICE K.HEMA

MONDAY, THE 12TH MARCH 2007 / 21ST PHALGUNA 1928

Crl.Rev.Pet.No. 642 of 2000()

CC.102/1993 of JUDL. MAGISTRATE OF FIRST CLASS COURT, ADIMALI
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REVN. PETITIONER(S):

S.KUMARESAN, S/O.DHARMARAJ, PERUMAL
GOUNDER PETTY, BOODINAKANOOR TWON,
UTHAMPALAYAM TALUK, MADURAI DT.
NOW RESIDING AT THE HOUSE OF P.J.VARGHESE,
PALLIVATHUCKAL HOUSE,
20 ACRE KARA, BATSON VALLEY VILLAGE,
DEVIKULAM TALUK.

BY ADV. SRI.MATHEW JOHN (K)

RESPONDENT(S):

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1. PRASAD, S/O.JOHN, PERUMATHU VEEDU,
MUTHUVANKUDI KARA, VELLATHOOVAL VILLAGE.
 2. K.P.VIJAYAJN, MUTTATHU VEEDU,
THOKKUPARA KARA, KUNCHITHANNI VILLAGE.
 3. PAULOSE, S/O.JOSEPH, ORAVALAKUDI VEEDU,
ADIMALY KARA, MANNAMKANDAM VILLAGE.
 4. PETER, S/O.JOSEPH, KOTTUPILLIL VEEDU,
MUTHUVANKUDI KARA,
KUNHITHANNI VILLAGE.
 5. JAYAN, S/O.CHAKRAPANI, POTTANANIYIL VEEDY,
-DO- -DO-
 6. CHITHAMBARAPANDIAN, S/O.THANKAYYATHEVAR,
VADAKKUM THERUVAIL, DO. DO.
 7. STATE OF KERALA, REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA.

- BY PUBLIC PROSECUTOR SRI. SURESH KUMAR.

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 12/03/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K. HEMA, J.

Crl.R.P. No.642 of 2000

Dated this the 12th day of March, 2007.

ORDER

Revision petitioner is the de facto complainant, who was examined as PW1 before the trial court. He filed this revision against an order of acquittal of the accused for offences under section 342, 347, 385, 506(II) read with section 34 IPC.

2. A complaint dated 31.7.1993 was filed by PW3 alleging offences under section 342, 347, 385, 506(II) read with section 34 of IPC against the accused. The complaint was forwarded by learned Magistrate for investigation under section 156(3) Code of Criminal Procedure. Thereupon, a crime was registered and a charge-sheet was laid for the above said offences. Learned Magistrate took cognizance of the offences and proceeded against the accused.

3. Evidence was adduced. PWs 1 to 5 were examined and Exts.P1 to P4 were marked. As per the impugned judgment, evidence was closed in view of the decision of the Supreme Court in Raj Deo Sarma v. State of Bihar, (1998) 7 SCC 507, since inspite of repeated steps CW3, CW5, CW7, CW8 and CWs10 to 12 were not available.

The accused were questioned under section 313 Cr.P.C. DWs 1 to 3 were examined and Ext.D1 was marked on the side of the accused. The trial court, thereafter considering the available evidence, acquitted the accused.

4. The main ground raised in this case is that the lower court erred in closing the evidence on the basis of the decision of the Supreme Court in Raj Deo Sarma (supra). According to revision petitioner, to apply the above decision certain conditions are to be satisfied, but these are not satisfied in this case. Therefore the order under challenge is liable to be set aside, it is submitted.

5. On going through the records and the judgment, I find that the court below closed the evidence on the representation made by the defence that witnesses are not available (vide proceeding sheet order dated 4.2.99). The court closed the evidence of the prosecution on the representation made on behalf of the accused that the witnesses are not available. But learned Magistrate has referred to in the judgment that the evidence was closed since CW4, CW5, CW7, CW8 and CWs 10 to 12 were not available, inspite of repeated steps etc., (in the light of the decision of the Supreme Court in Raj Deo Sarma's case)

6. A perusal of the proceeding sheet reveals that the closing of the evidence on the submission of this defence was not proper. It is seen that summons was ordered to CW4 to 7 from 20.6.1995 onwards. But the court does not appear to have verified whether summons was actually despatched from the court and whether attempts were made to serve summons on the witnesses. In the same manner, non-bailable warrant was issued against CW4, CW5 and CW7 on 24.4.1996. But it is not clear from the proceeding sheet as to what happened to the warrant issued, whether it was executed or not or, whether warrants were despatched or not.

7. On the next posting date i.e. 12.6.1996 non bailable warrant was repeated only to CW4. Thereafter, it was repeated against CW4 and CW5. On 25.9.1996, CW5 was served. Since certain documents were not available, the presence of CW5 was noted and he was "discharged". From 25.9.1996 onwards, summons is seen issued mainly to produce documents. Several postings were given for this purpose. Thereafter, on 19.11.1998, summons is seen ordered against CW5, CW7 to 9 again. On 10.12.1998, a bailable warrant was ordered against CW9 and summons was issued to other witnesses and the case was posted to 4.2.1999.

8. No doubt, that the court below closed the evidence illegally and without ensuring that necessary steps were taken to procure witnesses' presence. The mere passing of an order on the proceeding sheet will not be sufficient for the court to close the evidence holding that summons was repeatedly issued etc. There is impropriety in closing the evidence of prosecution without ascertaining whether witnesses were actually served with summons or no and also whether warrant was attempted to be executed. Hence, order under challenge is liable to set aside.

9. In the light of the above finding, I am not pronouncing anything on the merit of the case though several contentions are raised in the revision memo on merits also. I am satisfied that the prosecution must be given an opportunity to adduce evidence. The order under challenge is set aside and the case is remanded to the trial court for fresh disposal in accordance with law. (There was no representation for the accused). The Accused and the counsel did not appear.

In the result, the order under challenge is set aside. The trial court shall take the case on file and dispose of the case in accordance with law, in the light of the observations made in this order. The case being an old one, the trial court shall dispose of the case as

expeditiously as possible and not later than four months from the date of receipt of a copy of this order. Both sides shall appear on receipt of notice to their counsel from the trial court.

This revision petition is allowed.

SD/-

K. HEMA, JUDGE.

Krs.

K. HEMA, J.

Crl.R.P. No.642 of 2000

Dated this the 12th day of March, 2007.

ORDER